



Charity Law

(November 2014)

1. Introduction

1.1 Charities are a special part of UK life and have a long legal history starting with the first charity act in 1601. Since then there have been several acts of parliament with the 2011 Act being the most recent. Charity law applies to **all** charities, whether they are registered with the Charity Commission (the 'Commission') or not. So if you are an unregistered charity, i.e. do not have a charity number but are still charitable in law (if you are uncertain if you are a charity contact BCVS or seek other expert advice), you and your trustees have to abide by charity law. The main regulator of charity law is the Commission and courts will generally look to see if charities are following guidance from the Commission if a case is brought before them.

1.2 Below is a brief summary of the main areas of charity law and how it affects trustees. It is not a statement of law but is for information only with links to relevant Commission publications. Each charity will have to interpret these areas according to how their charity operates and you might need to seek expert advice or contact BCVS. Also remember that charities will also have to follow other laws such as employment, health and safety, data protection.

2. What is a charity? (www.gov.uk/government/publications/what-makes-a-charity-cc4)

2.1 Charities (it is illegal to call yourself a charity unless you are one) are organisations:

- Established exclusively for charitable purposes (there are 13) **AND**
- Operate for the public benefit **AND**
- Subject to the laws of England and Wales.

2.2 You can be a charity without having to be registered with the Commission and so have a charity number. If you a charity then you have to follow charity law and those with the ultimate responsibility for running it will be charity trustees.

2.3 Charities can have four types of legal structure, i.e. charitable trust, unincorporated association, charitable company and Charitable Incorporated Organisation (CIO). You need to be aware of what your legal structure is as it will affect your reporting and legal responsibilities and liabilities. Look at the BCVS [Getting Starting](#) pack and www.gov.uk/charity-types-how-to-choose-a-structure .

3. Registering as a charity (www.gov.uk/how-to-register-your-charity-cc21b)

3.1 Not all charities have to register with the Commission. Some charities are exempted and so do not have to register, this includes scout/guide groups, certain denominational churches, armed force charities unless their annual income is above £100,000 (in the future this threshold may be reduced). Other charities are exempt because they are regulated by another body. For instance the Department of Education regulates foundation, voluntary aided/controlled and free schools and the Homes and Communities Agency housing associations. Generally small charities with no land or less than £5,000 in cash or annual income are also exempt. However as soon as they

cross these thresholds they **MUST** register (unless their increase in income will be only for a year). However all CIOs have to register (there is no cash threshold). Therefore trustees must be aware if they need to register or not.

3.2 Once registered by the Commission they will be given a unique charity number and entered on the public [Register of Charities](#). This is web based and each charity has a set of webpages containing public information.

4. The importance of the Objects clause

4.1 A charity's charitable purpose is usually expressed as an Objects clause in its constitution or Articles. (www.gov.uk/how-to-write-charitable-purposes)

4.2 The overriding duty of all charity trustees is to advance the purposes of the charity. Therefore all decisions made should be the ones that best implement the Objects.

4.3 Any decision made that lies outside the Objects would be illegal and trustees could be made to pay any loss to the charity.

5. Public benefit (www.gov.uk/public-benefit-rules-for-charities)

5.1 One of the fundamental tests of a charity is the creation of public benefit. Charity law sets out two principles:

- There must be an identifiable benefit or benefits; and
- The benefit must be to the public or a section of the public.

5.2 Trustees should regularly consider, and review, how their activities meet the public benefit test and report on it in their Annual Report.

6. Being a trustee (www.gov.uk/charity-trustee-whats-involved)

6.1 Trustees have a number of roles:

- Compliance (obeying charity and other laws and its own constitution)
- Prudence (looking after the charity's finances and reputation)
- Duty of care (i.e. always acting in the best interests of the charity, acting collectively and reasonably).

6.2 Codes of conduct, clear role descriptions, conflict of interest policies, etc. are all useful documents to have. Although the buck stops with the trustees they can delegate work and ask for advice but if they delegate decision making they should:

- Make sure they have the power to delegate in the constitution
- Set out the terms in writing (e.g. minutes of a trustees meeting) covering:
 - What powers are delegated
 - To whom
 - Timing and nature of reporting back
 - Any financial or budgetary limits

6.3 For more detail please see our other factsheet [Duties of Trustees](#) and (www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/)

7. Accounting and auditing (www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-cc15b)

7.1 All charities, both registered and unregistered, have a duty to look after their cash and assets. They must keep accurate and up to date accounting records so that at any

one time the trustees can state fairly accurately the charity's finances. These records must be kept for at least 6 years. (www.gov.uk/charity-money-how-to-keep-it-safe)

7.2. Trustees must produce annual accounts (www.gov.uk/prepare-charitys-annual-accounts) including a summary of income, expenditure, assets and liabilities. The accounts must also clearly distinguish between

- unrestricted (i.e. where the trustees have absolute control over how to spend the money to achieve the charity objects),
- restricted (i.e. where a donor has clearly said how they want their donation spent)
- endowed funds (usually investments, money or property, that cannot be spent but any income earned such as interest or rent can be).

7.3 All charitable companies have to produce accrual accounts but other charities can use the simpler receipts and payments as long as their income is less than £250,000.

7.4 Unless the charity constitution applies a higher level of external scrutiny of their annual accounts then charities must:

- Have an independent examination if their annual income is more than £25,000 (an independent person is someone reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts) www.gov.uk/government/publications/independent-examination-of-charity-accounts-trustees-cc31
- Have an independent examination by a qualified person (guidance available from the Commission) if their annual income is over £250,000
- Have a full audit by a qualified auditor if their annual income is more than £500,000.

7.5 As well as annual financial accounts trustees of registered charities must produce a Trustees Annual Report setting out what activities and public benefit took place in that year. (www.gov.uk/prepare-a-charity-trustees-annual-report)

8. Investment of funds (www.gov.uk/how-to-invest-charity-money)

8.1 Charity Law has rules about the investment of charity funds other than in normal bank saving accounts so usually covers stocks and shares, land, other investments that are intended to produce a financial return.

8.2 This is a particularly complex bit of charity law and a charity that is lucky enough to think about long term investments must obtain professional advice.

8.3 Generally the charity will need an express power in its constitution to invest long term (and usually includes the power to appoint a third party to manage these) and the overriding duty is to balance the risk of losing charity funds against the financial return (i.e. you will need professional advice).

8.4 Although there is a duty to maximise the investment the Commission does allow some flexibility in the choice of what investment to make (i.e. ethically) but again you will need professional advice.

8.5 Financing the start-up of a trading subsidiary (see 11.6) is seen by the Commission as an investment and so trustees must only do so if the venture is not too risky, and on commercial terms (i.e. no interest free loans).

9. Reporting/Updating the Charity Commission

9.1 All registered charities are required to keep their details on the public Register up to date (this can easily be done electronically).

9.2 Each year the Commission will send charities either an Annual Update if their annual income is less than £10,000 or an Annual Return if over. This must be returned within 10 months of the year end.

9.3 All CIOs and other charities with an income of more than £25,000 must send a copy of their annual accounts and Trustee Annual Report to the Commission, also within 10 months of the year end.

9.4 If you do not return either of the above then the Commission will 'red' flag you on the public register and their advice to donors is not to give to red-flagged charities as this is evidence of mis-management.

9.5 Charities must report a 'serious incident' to the Commission immediately.

(www.gov.uk/how-to-report-a-serious-incident-in-your-charity) The Commission defines these as incidents that results in, or risks, significant:

- loss of charity money or assets
- damage to charity property
- harm to a charity's work, beneficiaries or reputation

Any actual or suspected criminal activity within or involving a charity is a serious incident as is being investigated by the police or another regulator for any reason.

10. Public reporting

10.1 If a registered charity with annual income of more than £10,000 is seeking funds and support then any such request must clearly say that the organisation is a registered charity. Good practice is that all charities should clearly state they are a charity. Since any form of communication could be interpreted as seeking some form of support best practice is to make sure this statement is on everything produced by the charity, and if registered the charity number (these can be in the small print at the bottom of letters, websites, posters, leaflets, etc.).

10.2 If the charity is a CIO and does not have the initials CIO or words Charitable Incorporated Organisation in its name then all documentation must say it is a CIO (again can be in the small print). Similarly a charitable company has to say it is a charity as well as a company on all its publications.

10.3 Annual accounts and Trustee Annual Reports must be provided to a member of the public within 2 months (all the trustees will be guilty of a criminal offence if they do not). A reasonable fee can be asked for in return, up to £10 is currently seen to be reasonable.

11. Charities and Trading (www.gov.uk/government/publications/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35)

11.1 Trading is the exchange of goods or services for a fee. Someone pays (cash or in kind) in the expectation they will receive something in return, which may not be 'valued' at the same amount, i.e. it is subsidised and/or discounted. Therefore there is a legally binding 'contract' between the buyer and seller, with recourse to the law if anything goes wrong.

11.2 Straight donations, or the sale of donated goods in a charity shop, are deemed not to be trading. However delivering a service as part of a contract is trading.

11.3 It's not always easy to say if something is trading or not but it's HMRC who have the final say so, so if you are unsure you might need to get them to decide, or another professional, so if it later transpires that HMRC considers it to be trading (remember they can go back up to 6 years!) you have some protection against any penalties.

11.4 Sponsoring is usually seen as trading by HMRC if the charity aids the sponsor in its publicity and promotion. So anything more than a straight thank you by the charity will be seen as trading.

11.5 Charities can carry out as much trading as they wish if it directly helps them deliver their Objects (e.g. a child care charity selling childcare places) as long as any surplus is used for charitable purposes. This is called primary purpose trading.

11.6 If it is not primary purpose trading you may be able to do a certain amount of other trading without incurring any penalties. For more information see [Charities Can Trade](#).

11.6 Trading will always carry a certain amount of risk (i.e. will sales cover costs?) and the Commission will expect trustees to have considered this, and if a loss occurs from an obviously risky venture the trustees may be individually liable for these.

11.6 If a charity wants to carry out a significant amount of non-primary purpose trading, or they want to limit the risk then the obvious answer is to set up a trading subsidiary (i.e. the charity appoints the directors and the subsidiary donates profits back to the parent).

12. Fundraising (www.gov.uk/fundraising-legally-and-responsibly)

12.1 Remember that fundraising itself is not charitable! It's what you do with the money that makes it charitable. If the money raised is used for charitable benefit then there are a lot of law and tax breaks that charities can rely on (see Section 13).

12.2 If money is raised for a particular purpose then it becomes a 'restricted fund' and must only be used for that purpose.

12.3 The Institute of Fundraising (www.institute-of-fundraising.org.uk) provides voluntary codes about legal and good practice in all forms of fundraising. The Commission does have the power to introduce mandatory codes if the voluntary ones are seen not to be working. Therefore it's in the interests of everyone for charities to follow the IoF codes.

12.4 If charities fundraise then they must make it plain to donors that they are a charity and what the money will be used for.

12.5 If a professional fundraiser (someone you pay to raise money for you, it does not include your own fundraising staff) is used then there must be a written contract.

12.6 Fundraising events will not be subject to VAT unless there are more than 15 such events in the same place per year and the weekly income is more than £1,000.

12.5 There are special rules about public collections including house to house, telephone, street, direct mail, auctions/car boot sales, challenge events, lotteries/raffles, prize draws, etc. Go to IoF for more guidance.

12.6 If a charity disapproves of someone raising money on their behalf under charity law they can seek an injunction to stop that person doing so.

13. Charities and tax (www.gov.uk/charities-and-tax)

13.1 Charities (registered and unregistered) have a number of tax benefits. The main one is being exempt from income, corporation and capital gains tax on all income used for charitable purposes.

13.2 Charities do not pay stamp duty on the purchase of property and registered charities automatically receive 80% relief on business rates (as long as 60% of the premises are used for charitable purposes).

13.3 Charities (again includes unregistered charities) can claim 25% back on donations that are Gift Aided by UK income tax payers.

13.4 These important tax breaks will be lost if a charity does not keep to the special rules. One of the main ones is to be recognised by HMRC (another form at the moment although the government is looking at single registration to the Commission and HMRC) and that those running a charity are 'fit and proper persons'.

13.5 Fundraising is not charitable and in many cases could attract VAT or corporation tax but again HMRC allows a number of concessions (see Section 12 above).

13.6 Charities generally have to pay VAT. There are only a few concessions for charities such as vocational training, the purchase of disability aids for the use of charity users, domestic VAT on energy supplies, printing and advertising, entrance to museums, galleries and cultural events. A charity's income may be deemed to be VATable income, even if it is primary purpose (See 11.5) and so have to register, and charge VAT, if its income is above the current threshold. VAT is very complicated and a charity may need professional advice from a charity accountant. For a brief guide see [VAT Made Simple](#).

14. Charities and property (www.gov.uk/charity-land-and-property)

14.1 Generally charities have the power to own or rent property if it is necessary to carry out their charitable work; however charities need to check what powers are in their constitutions to see if there are any conditions on this usage.

14.2 All charities must obtain appropriate professional advice in any property transaction. The degree of advice will depend on the type of transaction (e.g. a long full repairing lease may need legal opinion on the lease itself, a structural survey and valuation). If the charity does not take advice and makes a significant loss the trustees could be held financially liable.

14.3 There are special rules on mortgages, selling or disposing of land or surrendering a lease.

14.4 All sales/leases of more than seven years have to be registered with the Land Registry.

14.5 If letting out property you must charge the market rent (charities might need a professional assessment of this). Charities can only charge below this level if they can show that by doing so helps the charity directly fulfil its Objects. Again trustees may need professional advice.

15. Risk management (www.gov.uk/how-to-manage-risks-in-your-charity)

15.1 The Commission expects trustees to assess the risks to the charity, not just health and safety but also legal, reputational, financial and security. Quite often this duty will be carried out through the process of agreeing policies and procedures, and their regular review.

15.2 This does not mean not undertaking risky activities but means the trustees making balanced and informed decisions about risks being worth taking if they will more effectively help achieve its Objects.

15.3 Larger charities that require a full audit have to state in their accounts they have considered any risks to the charity and that they have put measures in place to control them.

15.4 Risk management typically involves deciding to either live with the risk, or try and reduce it, or to avoid it altogether or to pass the risk on.

15.5 The most common way of passing the risk on is through insurance, e.g. against loss of assets through theft or fire, injury claims against the charity by employees and the public. The Commission expects trustees to take out appropriate insurance as necessary to help project loss to the charity assets of any claim. (www.gov.uk/how-to-insure-your-charity)

16. Bribery Act and anti-terrorism regulation: the charity law implications

16.1 Bribery means offering, promising or giving someone a financial or other advantage to encourage them to perform their functions or activities improperly, and includes where it is known or believed that the acceptance of the advantage in itself constitutes improper performance. It also means asking for or agreeing to accept a bribe.

16.2 The Bribery Act 2010, updating previous law, creates four criminal offences:

- bribing another person
- accepting a bribe
- bribing a foreign official
- failing to prevent bribery (for organisations including charities)

16.3 The Commission expects trustees to abide by the legislation and to take steps to protect a charity's reputation and assets by taking all reasonable steps to prevent bribery. (www.cfg.org.uk/Policy/charity-law-and-regulation/bribery-act-2010.aspx)

16.4 The Commission is very concerned about charities that are, or could be seen to, support terrorism and terrorist organisations. It is particularly concerned about charities that carry out work in areas of conflict. It regularly carries out statutory inquiries into organisations it suspects, or are reported to them, as involved in terrorism. www.gov.uk/government/publications/charities-and-terrorism

17. Contracts and grants

17.1 Charities now get funding from statutory agencies either as a grant or a contract. It is very important to understand which it is, although it is sometimes difficult to tell. A grant will, usually, be a restricted fund to be spent on a particular purpose and is not subject to VAT. A contract will usually be unrestricted with a legal obligation to deliver a service (and so be sued if not delivered), usually any surplus can be kept and the contract value will be subject to VAT.

18. Providing public services (www.gov.uk/public-service-delivery-rules-for-charities)

18.1 Outsourcing of services previously provided by statutory bodies has become progressively more common.

18.2 The Commission has specific guidance on this and clearly states that there is no general legal prohibition on charities delivering public services under a funding agreement with a public authority or using their own funds to do so, even if the authority has a legal duty to provide the service.

18.3 However it cautions charities about taking on public service contracts and says that trustees must seriously consider the risks and benefits and summarises its advice as:

- stick to your mission;
- guard your independence; and
- know your worth.

19. Campaigning (www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9)

19.1 Campaigning in the sense of informing the public about an issue in a way that helps the charity to fulfil its objects is perfectly legal.

19.2 If a charity wants to campaign about a change in the law (i.e. political) then again this is legal as long as it is the best way of achieving its Objects, it does not become the sole activity of a charity for a significant amount of time (therefore it could become the sole activity for a few months) **AND** it cannot be seen as support or opposition to a particular political party.

19.3 Recent legislation on activities during election periods applies to charities. The law says that if an activity held during a set period before an election can be seen to influence the public about who to vote for or not, then an organisation will need to consider if it needs to register with the Electoral Commission.

(www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners)

20. Orderly closing down

20.1 The Commission expects charities to close down in an orderly way to make sure that the charity assets and beneficiaries are protected.

20.2 If the charity is solvent i.e. it can pay off its debts the process will be simpler than if it is insolvent which will need professional advice.

20.3 The law is different depending on whether the charity is a company or another incorporated form (e.g. CIO) or not. Technically an unincorporated charity cannot be insolvent as any creditors could chase the trustees and/or, members of the charity for any outstanding debts.

20.4 The Commission publishes some best practice and so seen as minimum actions to take but probably any charity will need expert advice.

www.gov.uk/government/publications/managing-financial-difficulties-insolvency-in-charities-cc12/managing-financial-difficulties-insolvency-in-charities

20.5 If on winding up any assets are left these will have to go to another charity, usually with similar purposes. Charity constitutions should have a clause clearly stating what happens to any remaining assets. If not the Commission will have to decide.

21. Role of Charity Commission

21.1 The Commission is the statutory regulator of charities in England and Wales. Its objectives are to:

- increase public trust and confidence in charity
- promote awareness and understanding of the operation of the public benefit requirement.
- promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
- promote the effective use of charitable resources.
- enhance the accountability of charities to donors, beneficiaries and the general public.

21.2 Charities must:

- Register with the Commission if their income is above £5,000 (All CIOs must register)
- Co-operate and supply information to the Commission if asked
- If registered keep the details on the Register up to date, complete annual updates/returns and file annual accounts/reports depending on annual income
- Seek approval from the Commission in certain circumstances (e.g. changing parts of the constitution relating to its Objects, benefits to trustees, winding up)

21.3 The Commission has the power to:

- Give advice on certain areas of charity law which can be relied on in court
- Undertake statutory inquiries (www.gov.uk/government/publications/statutory-inquiries-into-charities-guidance-for-charities-cc46)
- Direct trustees to take particular actions
- Freeze bank accounts
- Appoint managers to run a charity if they consider the trustees are unable to
- Remove trustees from a charity and even disqualify from being a trustee
- Remove a charity from the Register if they consider it to no longer be a charity
- Create schemes if a charity is unable to use charity funds for the purposes they were originally given for
- Relieve trustees from personal liability if they consider they acted honestly and reasonably

21.4 If someone disagrees with a decision by the Commission they can:

- Use the Commission's internal dispute policy
- If unhappy can apply to the Charity Tribunal (a legal court)
- If unhappy about a Tribunal decision can appeal to the High Court

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